

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

ARACELY ZAMORA-GARCIA,)	
JUANA ZAMORA,)	
MANUEL SANDOVAL-HERRERA,)	C.A. No. M-05-331
IRMA SANDOVAL IBARRA VALENCIA,)	JURY DEMAND
JORGE LUIS ECHAVARRIA,)	
ADRIANA ECHAVARRIA,)	SIXTH AMENDED
MARIA FRANCISCA ARCE CEDENO,)	PETITION FOR WRIT
PETRA CARRANZA DE SALINAS,)	OF HABEAS CORPUS
MIGUEL RUBIO-FLORES,)	AND CLASS ACTION
ALBERTA RUBIO, NORMA PENA DE)	COMPLAINT
HERRERA, ISIDRO HERRERA,)	
LUIS ALVARADO-NARVAEZ, and)	
JUAN LARIN-ULLOA)	
in their own name and right, and on)	
behalf of all others similarly situated,)	
Petitioners/Plaintiffs,)	
)	
v.)	
)	
MARC MOORE, DISTRICT)	
DIRECTOR FOR INTERIOR)	
ENFORCEMENT, DEPARTMENT OF)	
HOMELAND SECURITY.)	
ALBERTO GONZALES, U.S. ATTORNEY)	
GENERAL, THE UNITED STATES OF)	
AMERICA,)	
MICHAEL W. PADILLA, in his capacity as)	
Independent Administrator with Will Annexed)	
of the ESTATE OF DON VANNERSON,)	
d/b/a AARON FEDERAL BONDING)	
AGENCY)	
FAIRMONT SPECIALTY INSURANCE)	
COMPANY (f/k/a RANGER INSURANCE)	
COMPANY), and)	
STONINGTON INSURANCE COMPANY)	
(f/k/a NOBEL INSURANCE COMPANY),)	
Respondents/Defendants.)	
)	

Aracely Zamora-Garcia, Juana Zamora, Manuel Sandoval-Herrera, Irma Sandoval Ibarra Valencia,

Adriana Echavarria, Jorge Luis Echavarria, Petra Carranza de Salinas, Miguel Rubio-Flores, Alberta Rubio, Norma Pena De Herrera, Isidro Herrera, Maria Francisca Arce Cedeno, Luis Alvarado-Narvaez, and Juan Larin-Ulloa (collectively, “Plaintiffs”), in their own names, and on behalf of all others similarly situated, file their Sixth Amended Petition for Writ of Habeas Corpus and Class Action Complaint.

INTRODUCTION AND SUMMARY OF CASE

1. Defendants Stonington Insurance Company (f/k/a Nobel Insurance Company) and Fairmont Specialty Insurance Company (f/k/a Ranger Insurance Company) (collectively the “Insurance Companies”), through their agent, Aaron Federal Bonding Company (sometimes known as U.S. Immigration Bonds and Services), the business name for Don Vannerson, (“Aaron Bonding”) enter and systematically breach contracts for the posting of surety immigration bonds. The conduct of the Insurance Companies and Aaron Bonding (collectively referred to herein as the “Bonding Defendants,” with respect to surety bonds posted by Aaron Bonding pursuant to its agency relationship with the Insurance Companies) breaches the contract rights of the indemnitors on those contracts (the “Indemnitors”) with whom they contract and third-party contract rights of the bonded immigrants (the “Bonded Immigrants”) whose release from detention the surety bonds secure. Their misconduct causes the Indemnitors and the Bonded Immigrants to forfeit collectively millions of dollars and compromises the Bonded Immigrants’ immigration rights.

2. The Bonding Defendants enter bond contracts with the Indemnitors (usually friends or relatives of an immigrant facing Removal Proceedings), wherein the Bonding Defendants agree to post surety bonds for the Bonded Immigrants with the Department of Homeland Security (or its predecessor entity in relevant respects, the Immigration and Naturalization Service, both referred to collectively herein as the “DHS”) so that the Bonded Immigrants may leave confinement while their Removal Proceedings are pending. The Bonding Defendants also contractually agree to provide notice to both the Indemnitors and the Bonded Immigrants of all appearances scheduled by the DHS of which the Bonding Defendants receive notice. For

these services the Indemnitors pay exorbitant, up-front, non-refundable fees equal to approximately half of the total bond, and they agree to indemnify the Bonding Defendants for the full amount of the bond, should the bond be breached for failure to attend a DHS-scheduled appearance. Moreover, the Bonding Defendants require the Indemnitors to pay, or guarantee the payment of, roughly half the amount of the bond in monthly installments into a “Build-Up Fund” or collateral account that the Bonding Defendants may draw from in paying on the bond to the DHS in the event the bond is breached.

3. The Bonding Defendants’ promise and contractual assurance to give to the Indemnitors and the Bonded Immigrants notice of upcoming DHS-scheduled appearances is *critical* because the DHS *only* provides notice of such scheduled appearances to the Bonding Defendants – not the Immigrants or the Indemnitors. Should an Immigrant miss a DHS appearance, the DHS may breach his bond. Once a bond is breached, several negative economic consequences automatically follow:

- The Bonding Defendants are liable to the DHS for the full amount of the bond, although the Bonding Defendants may reduce their exposure depending on when and if they produce the Bonded Immigrant to the DHS;
- The Indemnitor is liable to the Bonding Defendants for the full amount of the bond, less the amount of the Build-Up Fund, plus fees and expenses incurred by the Bonding Defendants; and
- Any collateral paid into the Build-Up Fund or collateral account is forfeited.

In addition, a breach of the bond negatively impacts the personal liberty and immigration rights of the Bonded Immigrant:

- The Bonded Immigrant faces detention for missing the DHS appearance, regardless of the status of his or her Removal Proceedings;
- If the Bonded Immigrant is under an order of removal, he or she faces immediate deportation for missing the DHS appearance, regardless of any further administrative or legal proceedings that may be available to challenge the removal order; and
- If the Bonded Immigrant is removed from the United States but has pending administrative

proceedings challenging that order, such as a motion to reopen or reconsider the removal order or an appeal from that order, the administrative proceedings are nullified, and the opportunity to pursue them is lost forever. Similarly, if the Bonded Immigrant has not filed such proceedings, but anticipated doing so, the opportunity to do so is forever lost.

4. The importance of the contractually required notice by the Bonding Defendants is clear: absent notice, the Bonded Immigrant does not know whether the DHS has scheduled an appearance for him, much less when to appear. Likewise, absent notice, the Indemnitor is robbed of the ability to take steps to ensure that the Bonded Immigrant timely appears. Notice is important to both Indemnitors and Immigrants because the Indemnitors risk economic harm (loss of their bond and/or collateral), while they both risk the loss of the Bonded Immigrant's ability to remain in the United States.

5. Despite entering *uniform contracts* requiring them to provide the critical notice to both the Bonded Immigrant and the Indemnitor, *the Bonding Defendants never provide advance notice of DHS-scheduled appearances to both the Bonded Immigrant and the Indemnitor*. The moment the Bonding Defendants receive notice of a DHS appearance yet fail to provide this notice to both the Bonded Immigrant and the Indemnitor, they materially breach the contract.

6. Rather than provide notice, the Bonding Defendants often attempt to apprehend the Bonded Immigrant shortly before a DHS-scheduled appearance – through their stable of bounty hunters. In most cases these unannounced abductions are unsuccessful, leaving the Bonded Immigrant unable to appear at the DHS-scheduled appearance and the Indemnitors unable to protect their interests.

7. The Federal Defendants, of course, are well aware of this problem. Yet the Federal Defendants do nothing to alleviate it. They could attempt to provide notice to the Bonded Immigrant, but they choose not to. Prior to the litigation culminating in the “Amwest Settlement,” it was the Federal Defendants’ practice to provide notice to both the surety on the contract (the Bonding Defendants) and the Bonded Immigrant of any demands made on the bond (a demand that the Bonding Defendant produce the alien). As part of the Amwest

Settlement, the Federal Defendants agreed that in the future they would provide such notice to the Bonded Immigrant, if at all, not less than three days after the notice had been given to the surety. Shortly after entering into this Agreement, the Federal Defendants ceased sending notice of such appearances/demands to the Bonded Immigrants.

8. In addition, the Bonding Defendants, as a matter of policy, do not return the Indemnitors' collateral to the Bonding Defendants after the Federal Defendants cancel a bond. Although their own bonding contracts specifically require the Bonding Defendants to return collateral after a bond cancellation, their policy is to just silently retain the collateral and hope that the Indemnitors will never seek a return of their collateral. The Bonding Defendants have millions of dollars of collateral that they are obligated to return to Indemnitors.

PARTIES

9. Plaintiffs IRMA IBARRA SANDOVAL VALENCIA ("IRMA SANDOVAL") and ADRIANA ECHAVARRIA are U.S. citizens. ALBERTA RUBIO is a citizen of Mexico and lawful permanent resident ("LPR") of the United States. JUANA ZAMORA is legally in the United States as either a LPR or an U.S. citizen.

10. Plaintiffs ARACELY ZAMORA-GARCIA ("ZAMORA-GARCIA"), MANUEL SANDOVAL-HERRERA ("MANUEL SANDOVAL"), PETRA CARRANZA DE SALINAS ("SALINAS"), MIGUEL RUBIO-FLORES ("MIGUEL RUBIO"), MARIA FRANCISCA ARCE CEDENO ("CEDENO"), NORMA PENA DE HERRERA, ISIDRO HERRERA, and LUIS ALVARADO-NARVEZ ("ALVARADO-NARVAEZ") are all citizens of Mexico, and are, or within the five years immediately preceding the filing of the instant action, have been under removal proceedings conducted in the State of Texas.

11. JUAN LARIN-ULLOA is a citizen of El Salvador residing in Kansas and is currently under removal proceedings.

12. All Plaintiffs, except Juan Larin-Ulloa, reside in the Rio Grande Valley, Texas.

13. Respondent/Defendant MARC MOORE is the District Director for Interior Enforcement, Department of Homeland Security, and is sued in his official capacity only.

14. Respondent/Defendant ALBERTO GONZALES is the United States Attorney General, and is also sued in his official capacity only.

15. Marc Moore and Alberto Gonzales are collectively referred to herein as the FEDERAL DEFENDANTS. Also, where appropriate, "Federal Defendants" refers to the DHS and/or one of its precursor agencies, the INS.

16. Defendant STONINGTON INSURANCE COMPANY (f/k/a NOBEL INSURANCE COMPANY) is an insurance company that does business in the State of Texas and has its home office in Addison, Texas. On information and belief, Nobel Insurance Company ("Nobel") was previously incorporated in Texas, but Stonington Insurance Company is not incorporated in Texas. Stonington Insurance Company's principal place of business may be in Texas.

17. Defendant FAIRMONT SPECIALTY INSURANCE COMPANY (f/k/a RANGER INSURANCE COMPANY) is an insurance company that does business in the State of Texas, lists its home city and state as Wilmington, Delaware with the Texas Department of Insurance, and was incorporated in Delaware. Fairmont Specialty Insurance Company's principal place of business is in Delaware. Fairmont Specialty Insurance Company now manages the immigration bonds issued by Nobel through Aaron Bonding.

18. Defendant MICHAEL W. PADILLA was appointed by the Harris County, Texas, Probate Court to serve as the "Independent Administrator with Will Annexed of the Estate of Don Vannerson" on April 7, 2006. Mr. Padilla resides in Houston, Texas, and is an employee of Fairmont Specialty Insurance Company. The ESTATE OF DON VANNERSON has conducted business as AARON FEDERAL BONDING

AGENCY since the death of Don Vannerson in March of 2004. Don Vannerson was a citizen of Texas, and the Estate of Don Vannerson is located in Texas. Aaron Federal Bonding Agency was an assumed business name for Don Vannerson. Except where indicated otherwise, Don Vannerson, d/b/a Aaron Federal Bonding Agency, the Estate of Don Vannerson, d/b/a Aaron Federal Bonding Agency, Michael Padilla, in his capacity as Independent Administrator of the Estate of Don Vannerson, d/b/a Aaron Federal Bonding Agency, and Aaron Federal Bonding Agency, are herein referred to as "Aaron Bonding." Aaron Bonding has done significant business at the Los Fresnos Processing Center, within the Court's jurisdiction, and has acted as an agent for both Nobel and Ranger Insurance Company ("Ranger"). Aaron Bonding regularly serves and/or served as the agent of both Nobel and Ranger in entering the Surety Bond contracts at issue in this litigation. Indeed, Nobel's and Ranger's names and addresses appear on the bonding contracts between Aaron Bonding and the Indemnitors.

19. Defendant SANTIAGO SOL ("SOL") is a bounty hunter, who, on behalf of the non-federal Defendants, and within the jurisdiction of this Court, attempted to arrest and secure the removal of, and who otherwise injured, Plaintiffs Zamora and Manuel Sandoval, during which attempt, he also caused emotional injury and/or financial loss to Plaintiff Irma Sandoval. On information and belief, it is alleged that Defendant Sol was an employee of Aaron Bonding at the time of this alleged misconduct. It is believed this relationship was later modified in an attempt to shield Aaron Bonding from liability for actions taken on its behalf. On information and belief, Sol is a citizen of Texas.

CLASS DEFINITIONS

20. Plaintiffs seek to represent the following classes and subclasses.

21. **The Indemnitor Notice Class:** Plaintiffs Irma Sandoval and Alberta Rubio seek to represent a class of the following Indemnitors in bringing claims for money damages against the Bonding Defendants:

(a) those who served or are serving as Indemnitors on a surety bond posted by a Bonding Defendant to secure the release of a Bonded Immigrant detained by the Federal Defendants, and

(b) who have fully paid their up-front, non-reimbursable fees to the Bonding Defendants pursuant to the terms of the bonding contracts, and

(c) where the Bonding Defendant received notice that the DHS has scheduled an appearance for the Bonded Immigrant before it, on or after April 16, 1998, under circumstances where the Bonding Defendant failed to provide notification of the scheduled appearance to either the Indemnitor or the Bonded Immigrant.

22. **The Indemnitor Collateral Class:** Plaintiff Alberta Rubio seeks to represent a class of the following Indemnitors in bringing claims for money damages against the Bonding Defendants:

(a) those who have served as Indemnitors on a surety bond posted by a Bonding Defendant to secure the release of a Bonded Immigrant detained by the Federal Defendants, and

(b) where the Bonded Immigrant's bond has been cancelled by the Federal Defendants, and

(c) where the Bonding Defendants have failed to return any collateral, net of fees validly charged under the bonding contracts, deposited with the Bonding Defendants to either the Indemnitor or the Bonded Immigrant on the bonding contract.

23. **The Bonded Immigrant Class:** Plaintiff Petra Carranza de Salinas seeks to represent a class of the following Bonded Immigrants in bringing claims for injunctive and declaratory relief against the Bonding Defendants:

(a) those who have been released from custody of the Federal Defendants pursuant to surety bonds posted by the Bonding Defendants, and

(b) where the bond is still outstanding.

24. **The Supervision Class:** Plaintiffs Zamora-Garcia, Manuel Sandoval, Salinas, Cedeno, Norma Pena de Herrera, Isidro Herrera, and Alvarado-Narvaez seek to represent the class of persons who are or will be under removal proceedings, who are not physically detained by the Federal Defendants, and who have been or will be under a final order of deportation, exclusion, or removal, which has not been or will not be executed for three months or more after its issuance, notwithstanding that there was no judicially ordered stay of deportation,

exclusion or removal during that three month period, and to whom the Federal Respondents have not issued Orders of Supervision, or have subsequently revoked or refused to renew previously issued Orders of Supervision.

25. **Obligor Cash Bond Class:** Plaintiff Adriana Echavarria seeks to represent, as the Obligor Cash Bond Class

- (a) all Obligors who posted an immigration Cash Bond,
- (b) which bond was breached on or after July 28, 1998, following a demand made on the Obligor which was returned undelivered to the Federal Defendants, and
- (c) where the Immigrant appeared at all hearings and other required appearances of which s/he received appropriate notice, and
- (c) where the Federal Defendants did not make additional efforts to provide actual notice of the demand to the Obligors, as would be required by *Jones v. Flowers*, 126 S. Ct. 1708 (2006).

Plaintiff Adrianna Echavarris seeks injunctive and declaratory relief on behalf of herself and the Obligor Cash Bond Class, requiring the Federal Defendants to reinstate reinstate the breached bonds, (if proceedings are ongoing), or reinstate and cancel the breached bonds (if proceedings have been completed).

26. **Immigrant Cash Bond Class A:** Plaintiff Jorge Echavarria seeks to represent, as the Immigrant Cash Bond Class A,

- (a) all Immigrants released on a Cash Bond,
- (b) which bond was breached on or after July 28, 1998, following a demand made on the Obligor which was returned undelivered to the Federal Defendants, and
- (c) where the Immigrant appeared at all hearings and other required appearances of which s/he received appropriate notice, and
- (d) where the Federal Defendants did not make additional efforts to provide actual notice of the demand to the Obligors, as would be required by *Jones v. Flowers*, 126 S. Ct. 1708 (2006).

Plaintiff Jorge Echavarria seeks injunctive and declaratory relief on behalf of himself and the Immigrant Cash Bond Class A, requiring the Federal Defendants to reinstate the breached bonds, (if proceedings are ongoing),

or reinstate and cancel the breached bonds (if proceedings have been completed).

27. **Immigrant Cash Bond Class B:** Plaintiff Juan Larin-Ulloa seeks to represent, as the Immigrant Cash Bond Class B, all Immigrants released on a Cash Bond, which bond is still outstanding, and all Immigrants who will, in the future, be released on cash bonds. Plaintiff Juan Larin-Ulloa seeks injunctive and declaratory relief on behalf of himself and the Immigrant Cash Bond Class B, requiring the Federal Defendants to make efforts to provide notice of a demand on the bond consistent with *Jones v. Flowers*, 126 S. Ct. 1708 (2006).

JURISDICTION AND VENUE

28. This Court has subject matter jurisdiction over the individual claims brought by Plaintiffs Irma Sandoval, Alberta Rubio, Salinas, Miguel Rubio, Aracely Zamora-Garcia, and Juana Zamora against the Bonding Defendants and Santiago Sol and the claims of the putative Indemnitor Notice Class, the Indemnitor Collateral Class, and the Bonded Immigrant Class pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1367 (supplemental jurisdiction). It also has subject matter jurisdiction over the claims of the Supervision Class pursuant to 28 U.S.C. § 1331.

29. This Court has personal jurisdiction over Defendants Nobel and Ranger (and their successors-in-interest), as well as over Aaron Bonding, because they have conducted business within the State of Texas and because of their specific contacts with the State of Texas, in connection with the conduct at issue in this Complaint.

30. This Court also has subject matter jurisdiction over the claims brought by Petitioners Zamora-Garcia, Manuel Sandoval, Salinas, Cedeno, Norma Pena de Herrera, Isidro Herrera, and Alvarado-Narvaez against the Federal Defendants (the Supervision Class claims and corresponding individual claims) under 28 U.S.C. § 2241. These Petitioners are all subject to restrictions on their liberty not shared by the populace at

large, and are therefore also in custody for purposes of habeas corpus, which custody is also alleged to be in violation of the laws and Constitution of the United States.

31. Plaintiffs Zamora-Garcia, Manuel Sandoval, Salinas, Cedeno, Norma Pena de Herrera, Isidro Herrera, Alvarado-Narvaez, and Adriana Echavarría also assert jurisdiction over the Federal Defendants pursuant to 28 U.S.C. § 1331 (federal question) and § 1346(a)(2) (action against an agency, and/or officers of the U.S.).

32. Venue is appropriate pursuant to 28 U.S.C. § 1391 (general venue) and 28 U.S.C. § 1491 (United States as a defendant). This action arises out of or is connected with business conducted by the Bonding Defendants and the Federal Defendants in this district. Further, venue is proper because the transactions that form the basis of Plaintiffs' claims were conducted in this district.

FACTS

33. Plaintiffs herein incorporate by reference the allegations in their original *Petition for Writ of Habeas Corpus and Class Action Complaint for Injunctive Relief* (filed April 16, 2002, in C.A. No. M-02-144) [Dkt. #1], their *First Amended Petition for Writ of Habeas Corpus and Class Action Complaint for Injunctive Relief* (filed May 7, 2002, in C.A. No. M-02-144) [Dkt. #2], and their *Second Amended Petition for Writ of Habeas Corpus and Class Action Complaint for Damages, Injunctive Relief, and Other Relief* (filed July 31, 2003, in C.A. No. M-02-144) [Dkt. #36]. Plaintiffs also hereby incorporate by reference the allegations in the *Opposed Motion of Alberta Rubio and Miguel Rubio-Flores to Intervene as Named Plaintiffs* (filed May 18, 2005, in C.A. No. M-02-144) [Dkt. #134].

I. THE IMMIGRANT BONDING SYSTEM – CASH BONDS AND SURETY BONDS

34. Most immigrants taken into custody by the DHS to begin removal proceedings are released pending such proceedings if they can post a bond. To post a bond, an Immigrant or an Obligor (usually a

relative or friend) may post the full amount of the bond (a “Cash Bond”) directly with the DHS. Should the Bonded Immigrant appear for all DHS appearances pursuant to demands on the bond by the DHS, the Cash Bond is cancelled and the amount deposited with the DHS is returned to whoever posted the bond.

35. Should the Bonded Immigrant fail to appear for a DHS appearance after a demand on the Cash Bond, the bond is forfeited to the federal government. Moreover, as a result of the breach of the bond, the Bonded Immigrant may be detained and even deported and may lose a variety of legal rights regarding his ability to remain in the United States.

36. Most immigrants, however, either do not know of the Cash Bond possibility or do not have access to sufficient resources to post the full amount of the bond. Such immigrants must arrange for an Indemnitor (usually a relative or friend legally in the U.S.) to contract with a bonding company (known herein as a “Surety”) to post a “Surety Bond” with the DHS. By this Surety Bond, the Surety agrees with the DHS that, should the Bonded Immigrant fail to appear for a DHS appearance after a demand on the bond, the Surety will pay the DHS the full amount of the bond. If the Bonded Immigrant appears for all DHS appearances after DHS demands, the bond is cancelled and the Surety does not have to pay the DHS on the bond. If the Bonded Immigrant misses such an appearance, the bond may be breached.

37. The Surety’s services do not come cheap. The Defendant Sureties in this case – the Bonding Defendants – charge each of the Indemnitors a non-refundable, up-front fee of approximately half the bond amount, which, in most cases, results in a fee of thousands of dollars. Each Indemnitor generally is required to pay each month into a Build-Up Account (or collateral account), which the Bonding Defendant may draw against should the bond be breached. This amount generally equals 40%-50% of the total amount of the bond. Finally, the Indemnitor agrees that, should the bond be breached, she/he will pay the Bonding Defendant for its out-of-pocket cost in covering the bond (the amount of the bond less the Build-Up Account), plus even more

fees.

38. Unfortunately, in *thousands* of Cash Bond and Surety Bond cases, the Bonded Immigrant does not appear for a DHS appearance after a demand on the bond, resulting in a breach of the bond. These breaches have severe consequences for both the Bonded Immigrant and the Indemnitor.

39. In the event of a breach of the bond, the Bonded Immigrant who is under a final order of removal will be deported if detained and forfeits his rights to pursue any administrative remedies challenging the removal order. In the event of a breach of the bond, Bonded Immigrants not under a final removal order are remanded to detention, forfeit the rights provided to them by the original bond, and may have difficulty obtaining a new bond.

40. As to the Indemnitors, upon the breach of the bond, any collateral they posted with the Bonding Defendant is in jeopardy, and they are obligated to the Bonding Defendant for whatever amount the Bonding Defendant must pay out-of-pocket to the DHS on the bond, plus additional fees charged by the Bonding Defendant. In most cases this amounts to thousands of dollars (on top of the non-refundable fee the Indemnitor previously paid the Bonding Defendant).

II. THE IMPORTANCE OF NOTICE

41. The Bonded Immigrant's immigration ability to remain in the United States, the right to reclaim the cash bond from the DHS (whether the Immigrant or an Obligor), the Bonded Immigrant's right to be released on a Surety Bond, the right of the Indemnitor to claim what has been paid into a Bonding Defendant's Build-Up Account, and the right of the Indemnitor to retain their treasure, all depend upon the Bonded Immigrant appearing for each DHS-scheduled appearance after a demand on the bond. Notice of such scheduled appearances is critical to the preservation of the Bonded Immigrant's, the Obligor's, and the Indemnitor's rights.

42. When individuals post Cash Bonds for detained immigrants, the documents given do not advise them to submit changes of address, and where the Obligor has not submitted a change of address, it is the Federal Defendants' practice to send notice of a demand on the bond only to the Obligor, at the address given when the bond was posted, even where the Bonded Immigrant is represented by counsel, and even where the Federal Defendants have actual knowledge that the Obligor and the Bonded Immigrant are residing at a different address.

43. Where an Obligor on a Cash Bond has moved following the posting of a bond, and a demand letter is returned undelivered, it is the Federal Defendants' practice to immediately breach the bond and send notice of that breach only to the same address (even when it is known to be incorrect) without making any further attempt to notify the Obligor, and regardless of whether the Bonded Immigrant continues to appear for his/her court appearances and other settings of which s/he had actual notice.

44. Unfortunately, in a great many Cash Bond cases notice never reaches the Obligors or the Bonded Immigrant. This results in the loss of the bond and the potential deportation of the Bonded Immigrant.

45. As to Surety Bonds, despite the critical importance of notice of DHS appearances, the Bonding Defendants never provide advance notice to either the Bonded Immigrants or the Indemnitors after receiving the demand from the DHS. As a result of this failure to provide notice, thousands of Bonded Immigrants are deported and lose their payments into the Build-Up Accounts. As a result of this failure to provide notice, thousands of Indemnitors lose the value of their up-front fees, lose the value of their payments into the Build-Up Accounts, and become obligated to pay the Bonding Defendant its out-of-pocket costs on the bond, as well as other fees charged by the Bonding Defendant.

46. The Bonding Defendants fail to provide this notice *even though their contracts with the Indemnitors specifically require them to provide this notice*. The Bonding Defendants' form contracts plainly

state as follows: “[BONDED IMMIGRANT] and INDEMNITOR will be notified by AGENCY of all appearances requested by the U.S. IMMIGRATION AND NATURALIZATION SERVICE of which AGENCY receives notice.” Unfortunately, the Bonding Defendants’ practice and intent is to not provide advance notice to either the Bonded Immigrant or the Indemnitor. The Indemnitors are thus deprived of the benefit of their bargains: they pay exorbitant, up-front fees for notice to themselves and the Bonded Immigrants, but the Bonding Defendants provide no such notice. Similarly, the Bonded Immigrants, as third-party beneficiaries of these surety contracts, are deprived of their contractual benefit, as well.

47. Instead of providing notice, the Bonding Defendants in many cases attempt to apprehend the Bonded Immigrants the night before or immediately before a DHS-scheduled appearance. In many cases these attempts are unsuccessful, leaving the Bonded Immigrant unable to appear at the DHS-scheduled appearance and the Indemnitor unable to protect his interest.

48. Notices of scheduled appearances by the DHS are not to be confused with notices of removal hearings provided by the Executive Office for Immigration Review (“EOIR”), an agency within the Department of Justice. Notices issued by the EOIR of removal hearings before the EOIR are served directly on the Bonded Immigrant or his/her attorney of record.

49. The DHS has the right to issue a call-in on the bond for any reason. Although such demands are most common when the DHS has decided to execute an administratively final order of removal, they are not limited to such situations. For example, in the case of Plaintiff Miguel Rubio, who was in deportation proceedings, and had never failed to appear before a hearing before an immigration judge, the demand was issued for the purpose of placing him under removal proceedings and detaining him without bond.

50. Unfortunately, when the Bonding Defendants serve as Surety, they as a matter of course fail to provide notice of the DHS demand that the Bonded Immigrants appear before the DHS.

51. Despite an Order of Removal issued by an EOIR immigration judge, a Bonded Immigrant has the right to pursue a variety of administrative remedies. First and foremost, the immigrant has a right to appeal the judge's order to the Board of Immigration Appeals ("BIA") and to remain in the United States pending any such appeal. *See* 8 C.F.R. § 1003.6(a). Although DHS does not generally make demands on the bond while such appeals are pending, they occasionally do so, as in the case of Plaintiff Zamora-Garcia. In that case, the demand was issued for the purpose of executing a removal order against her before the BIA determined whether or not her appeal was timely. If she had been removed pursuant to said demand, her appeal to the BIA would have been deemed abandoned. *See* 8 C.F.R. § 1003.4. As a result, she would also have lost the right to judicial review of the resulting decision of the BIA for failure to exhaust her administrative remedies. *See* 8 U.S.C. § 1252(d). Fortunately, she was not home when Defendant Sol, acting on behalf of the Bonding Defendants, attempted to apprehend her, and she was therefore able to pursue her appeal, which was ultimately found to have been timely.

52. In addition, an immigrant who has lost his or her appeal to the BIA has the right to file a motion to reopen and/or reconsider. This right is also lost if the immigrant is physically removed from the United States before such a motion is filed, or if filed, before it is adjudicated. *See* 8 C.F.R. § 1003.2(d). The BIA has the power to issue stays while the motion is being adjudicated. *See* 8 C.F.R. § 1003.2(f). Unfortunately, however, as a matter of policy, the BIA will not consider an application for a stay unless and until the applicant is in the physical custody of DHS. In the case of Mexican nationals living near the border, such as the named plaintiffs to this lawsuit, the immigrants can be, and often are, physically removed within hours of being taken into physical custody. This renders the stay provisions illusory unless the Bonded Immigrant has advance notice of a DHS demand on the bond so that he or she may prepare to apply for a stay with the BIA before being taken into custody.

53. Therefore, in order to have a meaningful opportunity to pursue such administrative remedies, the Bonded Immigrant must have advance notice of all DHS demands on the bond. Unfortunately, as discussed above, the Bonding Defendants uniformly fail to provide notice of those scheduled appearances before the DHS.

54. The Bonding Defendants have entered and breached thousands of these contracts. Their uniform practice and systematic contract breaches have resulted in the loss of thousands of dollars by each of thousands of Indemnitors, in addition to subjecting thousands of Bonded Immigrants to deportation. The Bonding Defendants have no intention of providing the promised notice to the Indemnitors and the Bonded Immigrants at the time they enter into form contracts with – and happily take exorbitant, non-refundable fees from – such individuals.

55. Moreover, the Bonding Defendants' uniform bond contracts require the Bonding Defendants to return to the Indemnitors the amounts paid into the Build-Up Accounts (or collateral accounts) upon a cancellation of the bond (less certain fees). However, the Bonding Defendants make it their practice and policy to refrain from providing notice of a cancellation of a bond, and the availability of collateral for collection, to either the Indemnitors or the Bonded Immigrants. Rather, the Bonding Defendants' policy is to simply sit quietly and hope no one learns of the cancellation of the bond and the availability of the collateral.

56. The Indemnitors and the Bonded Immigrants are generally poor, unsophisticated, non-English speakers. This fact makes the Bonding Defendants' wrongful conduct that much more unconscionable.

III. COLLUSION BETWEEN THE FEDERAL DEFENDANTS AND THE BONDING DEFENDANTS

57. The Federal Defendants, of course, are well aware that the Bonding Defendants fail to provide notice to the Bonded Immigrant and the Indemnitor of demands by the DHS on the surety bonds. Yet they do nothing to address this problem. They could attempt to provide notice to the Bonded Immigrant, yet they

choose not to. No rule of law prevents them from providing notice to the Bonded Immigrant. Instead, the Federal Defendants provide notice only to the Bonding Defendants and hide behind the “Amwest Settlement.” Indeed, prior to the Amwest Settlement, the Federal Defendants routinely provided notice to the Bonded Immigrants of scheduled appearances before the DHS.

58. The Amwest Settlement was negotiated without participation by the real parties in interest – the Bonded Immigrants. It provides, *inter alia*, that when a demand is made on a bond posted by a Surety, the Surety receives notice three days before notice, if any, is sent to the immigrant and/or his or her counsel. The Federal Defendants have adopted the practice of not providing any notice of such demands to the Bonded Immigrants. The Amwest Settlement does not prohibit or prevent the Federal Defendants from providing notice directly to the Bonded Immigrant.

59. Pursuant to the Amwest Settlement, where a bond posted by a Surety is breached, it may be mitigated, and the Surety's liability reduced or eliminated, if the Surety surrenders the immigrant within a given period of time after any bond breach.

60. In practice, the Federal Defendants exhibit a great deal of restraint and flexibility with respect to surety bonds, in some cases permitting cancellation, and full exoneration of liability, even when the Bonded Immigrant is surrendered long after the grace period allowed by the Amwest Settlement has expired, and in others, sending out more than one demand letter, years apart, and only taking steps to breach the bond if the immigrant is not produced in response to the second demand letter.

61. On information and belief, Plaintiffs allege that the surety bond system is manipulated by all Defendants to achieve the earliest possible removal of the Bonded Immigrant, with the least possible liability on the bond to the Surety, and without regard to whether this deprives the immigrant of the ability to pursue administrative or judicial remedies, or, as the real party in interest of the contract between the Surety and the

Indemnitor, of the benefits of the bond posted on his or her behalf.

62. On information and belief, Plaintiffs allege that where Cash Bonds are posted by individuals, the Federal Defendants manipulate the bond system, by failing to make good faith attempts to provide actual notice either to the Obligor or the real party in interest, the Bonded Immigrant, so as to be able to breach the bond and thus keep the collateral posted, without regard to whether the immigrant continues to appear at all court hearings and other settings of which s/he had actual and timely notice.

63. The practices of both the Federal Defendants and the Bonding Defendants violate the rights and interests of the Bonded Immigrants – the real parties in interest to the bond contract. The Amwest Settlement was reached without regard to their interests and has been utilized to further the interests of the Sureties (in limiting their liability under the bond) and of the Federal Defendants (in quickly executing removal orders) without regard to the rights of the Bonded Immigrants.

64. The Indemnitor Class, the Indemnitor Subclass, and the Bonded Immigrant Class have each been injured in an amount exceeding \$5,000,000.00. As discussed above, the Bonding Defendants issued and breached thousands of these surety bonds, each involving thousands of dollars.

IV. FACTS REGARDING THE NAMED PLAINTIFFS

A. Manuel Sandoval-Herrera And Irma Sandoval Ibarra Valencia

65. Manuel Sandoval is a native and citizen of Mexico, who entered the United States as an LPR on or about July 25, 1988 and has resided here continuously since that date.

66. On or about November 7, 1996, Mr. Sandoval pleaded guilty to a criminal offense and was placed on probation.

67. Mr. Sandoval was detained by the Federal Defendants on or about November 18, 1997. Irma Sandoval, Mr. Sandoval's daughter, contracted with Aaron Bonding, as agent for Nobel and/or Ranger, for it to

post a Surety Bond securing Mr. Sandoval's release. Irma Sandoval gave Defendant Aaron Bonding \$900 at the time as a non-refundable, up-front fee, and contractually agreed to make monthly payments into a Build-Up Account, until Aaron Bonding had received an additional \$750. The Sandovals timely paid all of the required amounts. Mr. Sandoval regularly reported to Aaron Bonding and had appeared at each and every scheduled hearing before the EOIR. As part of its contract with Irma Sandoval, Aaron Bonding agreed to provide notice of demands on the bond to both Irma Sandoval and Mr. Sandoval.

68. On January 15, 1999, an immigration judge ordered Mr. Sandoval's removal to Mexico, and on April 3, 2002, the Board of Immigration Appeals ("BIA") dismissed his appeal and ordered his removal to Mexico.

69. On June 4, 2002, the Federal Defendants issued a demand on Mr. Sandoval's bond, requiring Aaron Bonding to produce Mr. Sandoval for deportation on July 5, 2002. Aaron Bonding received this demand on the bond on June 6, 2002. Aaron Bonding provided no notice of this demand to either Mr. Sandoval (or his attorney) or Irma Sandoval. Because neither he nor Irma Sandoval was informed of this demand, he did not appear, and the bond was breached.

70. On or about July 6, 2002, Mr. Sandoval heard that someone in Brownsville, Texas, had been looking for him, to arrest and deport him. On advice of counsel, he promptly filed his petition for habeas corpus and arranged to be put under an Order of Supervision. Had Mr. Sandoval been picked up by Aaron Bonding after July 5, 2002, he would have been subject to detention and possible immediate deportation. Consequently, he might never have had the opportunity to file a habeas corpus petition and would almost certainly have been unable to regain his liberty and obtain an Order of Supervision – all because of Aaron Bonding's failure to provide notice of the DHS-scheduled appearance.

71. In August 2002, Irma Sandoval received a demand from Aaron Bonding for \$1,100, on the

grounds that her father had failed to report for a DHS-scheduled appearance, and the bond had therefore been breached. On September 18, 2002, when Mr. Sandoval called Aaron Bonding, he was told that if he did not pay that amount, an agent of Aaron Bonding would come pick him up, and physically take him to Mexico, thereby effectuating his deportation.

72. Aaron Bonding, acting as agent for Nobel, breached its contract with Irma Sandoval when it failed to provide notice of DHS' demand on the bond in July, 2002. This breach caused financial damage to Irma Sandoval and/or Mr. Sandoval and threatened to compromise the immigration rights of Mr. Sandoval.

B. Miguel Rubio and Alberta Rubio

73. Miguel Rubio is a native and citizen of Mexico and lawful permanent resident of the U.S. who was placed in deportation proceedings in 1996. His mother, Alberta Rubio, contracted with Aaron Bonding for the posting of the Surety Bond, and served as the Indemnitor on the bond contract. Ms. Rubio paid Aaron Bonding \$4,000 in up-front fees and collateral, and Aaron Bonding posted a \$3,000 Surety Bond on behalf of Mr. Rubio. Aaron Bonding contractually agreed to provide both Mr. Rubio and Alberta Rubio with notice of all appearances of Mr. Rubio requested by the INS/DHS.

74. Although his case was still pending before the Immigration Court, and Mr. Rubio had duly appeared at all his scheduled hearings, the INS, without informing Mr. Rubio, sent notice of a demand on the bond to Aaron Bonding on March 1, 2005, requiring that it cause Mr. Rubio to appear before the INS on April 12, 2005. Aaron Bonding did not provide advance notice of this demand on the bond to either Miguel Rubio or his Indemnitor, Alberta Rubio. Aaron Bonding therefore breached its contractual obligation to provide notice to Miguel and Alberta Rubio.

75. Aaron Bonding physically detained Mr. Rubio in the middle of the night on April 11, 2005, and surrendered him to the INS on April 12, 2005. Although the Federal Defendants had only demanded that

Aaron Bonding present Mr. Rubio for an interview, Aaron Bonding surrendered Mr. Rubio into the custody of the INS, and the INS cancelled Mr. Rubio's bond. The bonding contract between Alberta Rubio and the Bonding Defendants required the Bonding Defendants to maintain the surety bond until the conclusion of Mr. Rubio's immigration case. No provision of the bonding contract allowed the Bonding Defendants to surrender Mr. Rubio back to the INS prior to the conclusion of Mr. Rubio's immigration case, absent a breach of the contract by the Rubios. The Rubios fulfilled all of their obligations under the terms of the surety bond contract.

Mr. Rubio was forced to remain in INS detention for nearly five months, until September 5, 2005, when he finally was able to obtain a new surety bond from a different bond company.

76. By letter dated April 27, 2005, a bond company called "C.C.S." demanded that the Indemnitor, Alberta Rubio, pay them the full amount of the initial bond, plus a \$350 collection fee, because Mr. Rubio had allegedly not appeared when required, and the bond had been breached.

77. Aaron Bonding's breach of its obligation to provide notice threatened to compromise the immigration rights of Mr. Rubio and caused him to be unnecessarily detained for approximately five months. It also deprived Ms. Rubio of the value of her up-front fees – Ms. Rubio paid for notice to be provided to both her and her son, but no notice was provided.

78. Finally, even though the Federal Defendants cancelled Mr. Rubio's bond, releasing the Bonding Defendants of any obligation to pay on the bond, Aaron Bonding and Ranger (the surety on Mr. Rubio's bond) have failed to return Ms. Rubio's collateral to her. Moreover, documents in the bond file maintained by the Bonding Defendants regarding Mr. Rubio's bond specifically acknowledge that Ms. Rubio is owed a return of a portion of the collateral she posted.

C. Petra Carranza de Salinas

79. Plaintiff Petra Carranza de Salinas is a native and citizen of Mexico, who became a lawful

permanent resident (“LPR”) on or about August 29, 1985. Ms. Salinas was detained by the INS on or about August 18, 1997, and removal proceedings were commenced shortly thereafter. In 1997, her friend, Juan De La Rosa, contracted with Aaron Bonding to post a surety bond with the INS on Ms. Salinas’ behalf. On information and belief, Aaron Bonding contractually agreed that it would provide notice of any demands on the bond to both Ms. Salinas and Mr. De La Rosa. In exchange, Mr. De La Rosa paid Aaron Bonding an up-front, non-refundable fee and further agreed that he or Ms. Salinas would pay the entire amount of the bond into a Build-Up Account, which would be forfeited to Aaron Bonding in the event the bond was breached.

80. Ms. Salinas has personally paid, and Defendant Aaron Federal Bonding has accepted, all required payments from her as into the Build-Up Account, which monies she will lose if she fails to appear in response to any demand made on her bond. Ms. Salinas has appeared at each and every scheduled hearing before the EOIR. Her case is currently pending before the Fifth Circuit.

81. Although, to her knowledge, the DHS has not yet issued a demand on her bond, should it do so and should the Bonding Defendants continue their practice of breaching their bond contracts by failing to provide notice of DHS demands on Surety Bonds to either the Bonded Immigrant (here, Ms. Salinas) or the Indemnitor (here, Mr. De La Rosa), Ms. Salinas will likely lose the money she has paid into her Build-Up Account with Aaron Bonding. Moreover, she may face a loss of her ability to remain in the United States because of this lack of notice.

D. Aracely Zamora-Garcia and Juana Zamora

82. Aracely Zamora-Garcia is a Mexican national who immigrated to the U.S. with her family, in 1982, at the age of eight, and has resided here continuously ever since. She and her mother, Juana Zamora, live in Mission, Texas. In February of 2000, Zamora-Garcia was detained and placed under removal proceedings in the San Antonio district of the EOIR for helping two young girls enter the U.S. illegally, in order to reunite

them with their mother.

83. To secure Aracely's release from detention, Juana Zamora contacted Juvencio Peña, Aracely's cousin. Peña, on Juana Zamora's behalf, entered a contract with Defendant Aaron Bonding by which Aaron Bonding agreed to post a Surety Bond on Aracely Zamora's behalf. Aaron Bonding served as the agent of Ranger in contracting with Peña.

84. On September 20, 2001, an immigration judge ordered her removal, and her appeal to the BIA was pending on November 20, 2001, when the Federal Defendants issued a demand on the bond to Aaron Bonding, requiring that Aaron Bonding present Aracely Zamora-Garcia for an appearance before the DHS on December 12, 2001. Neither the Federal Defendants nor Aaron Bonding attempted to inform Aracely Zamora-Garcia (the Bonded Immigrant) or Peña (the Indemnitor) of this demand prior to December 12, 2001. When Aracely Zamora did not appear, her bond was breached.

85. Aaron Bonding's failure to provide notice to Aracely Zamora-Garcia and Peña constituted a breach of the contract it entered with Peña and a breach of Aracely Zamora-Garcia's third-party beneficiary contract rights. This breach threatened to compromise her immigration rights.

86. On April 15, 2002, several men, including Defendant Sol, and an officer from the Mission Police Department, went to the home of Juana Zamora in Mission, Texas. Defendant Sol left a business card with an "office" phone number, (713) 225-1386, which was, at the time the instant action was filed, answered by Defendant Aaron Bonding, and was listed in various websites as one of their numbers. Mr. Sol falsely asserted that he had a warrant for Zamora's removal, issued in December, 2001, and that he was authorized to arrest her. He further claimed that there was an order that she surrender to INS in San Antonio at 8:00 a.m. the following day. Fortunately, Aracely Zamora-Garcia was not home, and Sol was unable to apprehend her.

87. Juana Zamora called counsel, who contacted Mr. Sol and advised him that any warrant for

Aracely Zamora's removal issued in December 2001 could not be valid because her appeal was pending at that time and, thus, she was not subject to deportation. She also advised him that she would surrender Aracely Zamora to the Harlingen INS office in the morning. Mr. Sol insisted that she be surrendered to him, and threatened both Juana Zamora and her counsel with criminal charges of harboring a fugitive, for refusing to do so. In fact, Aracely Zamora-Garcia surrendered herself to the Federal Defendants the next day, at the Harlingen INS Office, where she remained when this action's predecessor action was filed, and was thereafter allowed to leave because she successfully filed a habeas petition with this Court (under current DHS policy, the filing of a petition by an immigrant in Aracely's situation would not have permitted her to leave detention).

88. Defendant Sol returned to the homes of Juana and Aracely Zamora-Garcia, and to the homes of other relatives several times over the next few days following April 16, 2002, even after being advised that the petition for habeas corpus had been filed, and that Aracely Zamora-Garcia had been allowed to leave the Harlingen INS office. He harassed and scared Juana Zamora to the point that she refused all contact with her daughter, who was forced to spend several days at other locations, in fear of him, causing both Juana and Aracely great emotional distress. Aracely Zamora-Garcia was only recently able to resume her normal life, partly for fear that he would locate her and take reprisals, and partly for fear that an encounter with him or with DHS/INS would lead to her removal, thus mooting her case before the BIA, and finalizing her removal.

89. From January 10, 2002 to December 12, 2002, and again from March 24, 2004 to the present, Aracely Zamora-Garcia was under an administratively final order of removal but was pursuing first administrative and, thereafter, judicial remedies. In April, 2002, she filed a fee-paid application with the INS District Director for a stay of deportation. INS cashed the check, but has never adjudicated the application.

E. Adrianna Echavarria

90. Jorge Echavarria was detained by the Federal Defendants and placed under deportation

proceedings in 1993. On November 5, 1993, his wife, Plaintiff Adriana Echavarria, paid a Cash Bond in the amount of \$1,500 to secure his release during proceedings. The bond papers did not warn Mrs. Echavarria that she had to report any change of address, independently of any changes of address of her husband. Jorge Echavarria has never failed to appear at an immigration court setting and has been represented by counsel at all relevant times. Neither Jorge Echavarria nor his wife ever received notice, in person or through counsel, of any demand on the bond. On June 10, 2003, Mr. Echavarria was granted relief from deportation, and the Government waived appeal. The Echavarrias assumed that this meant that the bond would be cancelled. On inquiry, however, counsel was informed by the Federal Defendants that it had been breached.

91. On an unknown date, the Federal Defendants made a demand on Mrs. Echavarria that she produce her husband, but they sent the demand only to her, and sent it to the address where she had resided in 1993. However, on information and belief, Plaintiffs allege that the Federal Defendants knew that she and her husband were no longer at that address, and the Federal Defendants had information regarding how to contact Mr. Echavarria.

F. Maria Francisca Cedenó

92. Cedenó is the mother of an 11-year-old U.S. citizen son, Jeremy, who suffers from a life-threatening blood disorder, propionic acidemia. It is hereditary, and at least three of her other children were born with this condition, and are deceased. Her husband and two of their Mexican national children are lawful permanent residents.

93. In order to enable her to care for Jeremy, Ms. Cedenó has been under an Order of Supervision since 1997, with no stay of removal. However, given the changes in the policies of the Federal Defendants, her Order of Supervision was cancelled. She was obliged to file an I-246, application for stay of removal, and even though that stay has been granted, until July 2007, the Federal Defendants have refused to issue her a new

Order of Supervision. This will make it impossible for her to renew her employment authorization documents and will compromise the family's economic stability.

G. Norma Pena de Herrera and Isidro Herrera

94. Norma Pena de Herrera and Isidro Herrera are husband and wife. They have five children, of whom two are U.S. citizens, including a twelve-year-old daughter, Brenda, who suffers from Beta Thalassemia Major, a serious blood disease for which there is no cure, but the effects of which can be mitigated by frequent blood transfusions and a drug called Desferol. Brenda requires constant medical attention of a nature which she could not obtain in Mexico, and which the Herreras could not provide if they were in Mexico. These facts have been known to the Federal Defendants for a number of years.

95. Ms. Herrera was previously a party to this litigation, following an incident on February 14, 2002, when the Federal Defendants arrested and deported her, in violation of prior verbal assurances to the contrary. Subsequently, an agreement was made, whereby DHS agreed, *inter alia*, to allow her to remain in the U.S. for so long as Brenda's condition required her presence, and to give an Order of Supervision, so that she could obtain employment authorization to enable her to support her children. In exchange, she agreed to drop her participation in the instant action. No stay of removal was ever issued for either Mr. or Mrs. Herrera.

96. On March 10, 2006, Mr. and Mrs. Herrera were advised that they needed to file I-246s, applications for administrative stays of deportation. On March 15, 2006, they filed said I-246s and were temporarily allowed to keep their Orders of Supervision, although they were required to report to ICE on a monthly basis, while awaiting their adjudication. *See* Plaintiffs' Exhibit R, herein incorporated by reference.

97. On August 22, 2006, Mr. and Mrs. Herrera reported, as instructed, and were informed that their I-246s had not yet been adjudicated. At that time, ICE confiscated their Orders of Supervision and informed them that they would no longer be able to have such Orders. Without Orders of Supervision, the Herreras will

be unable to renew their employment authorization documents and will be unable to maintain employment adequate to support the family. The family situation will become a crisis, emotionally, logistically, and financially, if, as appears likely, Isidro Herrera is forced to leave the United States, and Norma Herrera is left alone in the United States with the children.

H. Luis Alvarado-Narvaez

98. Alvarado-Narvaez is a seventy-three-year-old native and citizen of Mexico who has resided continuously in the United States since entering as an LPR on August 12, 1960.

99. On October 30, 1997, Mr. Alvarado pleaded no contest to a minor offense. Removal proceedings were commenced, charging conviction of an aggravated felony.

100. At his hearing, Mr. Alvarado denied deportability, and the Immigration Judge terminated proceedings, concluding that the offense was not an aggravated felony. INS appealed, and on November 20, 2002, the BIA granted INS' appeal. However, instead of remanding for the IJ to give Mr. Alvarado an opportunity to apply for relief, under 8 C.F.R. § 1240.11, the BIA ordered removal.

101. Mr. Alvarado promptly filed a petition for habeas corpus in U.S. District Court, CA M-02-526. He raised various claims, which the Court winnowed down to two: that the BIA Order was *ultra vires* (see *Noriega-Lopez v. Ashcroft*, 335 F.3d 874 (9th Cir. 2003)) and that under the facts of his case, removal would violate substantive Due Process. Following passage of the REAL ID Act of 2005, the case was transferred to the Fifth Circuit, where it is currently pending. On May 5, 2006, more than three years after the expiration of the 90-day removal period, that Court granted a stay of removal, pending review.

I. Juan Larin-Ulloa

102. Juan Larin-Ulloa is a native and citizen of El Salvador who came to the United States on or about May 11, 1981, and became a lawful permanent resident on November 28, 1989.

103. On January 24, 2002, the Federal Defendants detained Mr. Larin-Ulloa, and issued a Notice to Appear. On May 22, 2002, an immigration judge ordered Mr. Larin-Ulloa's removal. On August 20, 2003, the BIA affirmed the order of the immigration judge. Mr. Larin-Ulloa filed a motion to reopen on November 17, 2003, which was denied by the BIA on January 2, 2004. Mr. Larin-Ulloa petitioned the U.S. Court of Appeals for the Fifth Circuit for review of both BIA decisions, and on August 24, 2006, the Fifth Circuit vacated the BIA decisions and remanded his case to the BIA.

104. On September 1, 2006, an immigration judge set bond at \$1500, and an Obligor posted a cash bond on his behalf. He has appeared at every appearance requested by the Federal Defendants. He is still released pursuant to that cash bond.

CLASS ALLEGATIONS

105. Plaintiffs Irma Sandoval and Alberta Rubio seek certification of the Indemnitor Notice Class under Federal Rule of Civil Procedure ("FRCP") 23(b)(3). On behalf of themselves and the Indemnitor Notice Class, Plaintiffs Irma Sandoval and Alberta Rubio seek to recover the up-front fees they and members of the class paid the Bonding Defendants.

- a. There are thousands of members of the Indemnitor Notice Class, and the members are so numerous that joinder of all members of the class would be impracticable. The Indemnitor Notice Class satisfies the numerosity requirement of FRCP 23(a)(1).
- b. There are multiple issues of fact and law common to the claims of the Indemnitor Notice Class, including whether the uniform contracts the Bonding Defendants enter into with the Indemnitors require the Bonding Defendants to provide notice of appearances requested by the INS/DHS to the Indemnitors and the Bonded Immigrants, and whether the Insurers are liable for the misconduct of their agent, Aaron Bonding. Indeed, these common questions predominate over any individual issues that may exist. The Indemnitor Notice Class satisfies the commonality requirement of FRCP 23(a)(2) and the predominance requirement of FRCP 23(b)(3).
- c. The claims of Alberta Rubio and Irma Sandoval are typical of the claims of the members of the Indemnitor Notice Class. The Bonding Defendants contracted to provide Ms. Rubio and Ms. Sandoval and the Bonded Immigrants on those bonding contracts with notice of all

appearances requested by the INS/DHS of which the Bonding Defendants received notice. The Bonding Defendants entered the same contract with every member of the Indemnitor Notice Class. Like every member of the Indemnitor Notice Class, Ms. Rubio and Ms. Sandoval paid the Bonding Defendants up-front fees for the Bonding Defendants' services. The Bonding Defendants failed to provide the notice contracted for by every member of the Indemnitor Notice Class. The Indemnitor Notice Class and the proposed class representatives thus satisfy the typicality requirement of FRCP 23(a)(3).

- d. Alberta Rubio and Irma Sandoval, and their counsel, will adequately represent the class. The proposed class representatives satisfy the requirements of FRCP 23(a)(4).
- e. Pursuit of the claims of the Indemnitor Notice Class through a class action is superior to the litigation of each of the thousands of individual class member claims on an individual basis, each of which are for small amounts that cannot justify independent litigations, and the Indemnitor Notice Class thus satisfies the superiority requirement of FRCP 23(b)(3).

106. Plaintiff Alberta Rubio seeks certification of the Indemnitor Collateral Class under FRCP 23(b)(3). On behalf of herself and the Indemnitor Collateral Class, Plaintiff Alberta Rubio seeks to recover the collateral the Bonding Defendants have retained after a cancellation of the immigration bond at issue in the contract.

- a. There are hundreds of members of the Indemnitor Collateral Class, and the members are so numerous that joinder of all members of the class would be impracticable. The Indemnitor Collateral Class thus satisfies the numerosity requirement of FRCP 23(a)(1).
- b. There are multiple issues of fact and law common to the claims of the Indemnitor Collateral Class, including whether the uniform contracts the Bonding Defendants enter into with the Indemnitors require the Bonding Defendants to return the collateral the Indemnitors deposited with the Bonding Defendants, and whether the Insurers are liable for the misconduct of their agent, Aaron Bonding. Indeed, these common questions predominate over any individual issues that may exist. The Indemnitor Collateral Class thus satisfies the commonality requirement of FRCP 23(a)(2) and the predominance requirement of FRCP 23(b)(3).
- c. The claim of Alberta Rubio is typical of the claims of the members of the Indemnitor Collateral Class. Like every member of the Indemnitor Collateral Class, the bond Ms. Rubio contracted for was ultimately cancelled by the Federal Defendants. Like every member of the Indemnitor Collateral Class, pursuant to the Bonding Defendants' uniform contracts, upon the cancellation of the bond, Ms. Rubio is entitled to a return of the collateral she deposited with the Bonding Defendants. Like every member of the Indemnitor Collateral Class, Ms. Rubio has not received a return of her collateral. The Indemnitor Collateral Class and the proposed class representative thus satisfy the typicality requirement of FRCP 23(a)(3).

- d. Alberta Rubio, and her counsel, will adequately represent the class. The proposed class representative satisfies the requirements of FRCP 23(a)(4).
- e. Pursuit of the claims of the Indemnitor Collateral Class through a class action is superior to the litigation of each of the hundreds of individual class member claims on an individual basis, each of which cannot justify individual litigations, and the superiority requirement of FRCP 23(b)(3) is satisfied.

107. Plaintiff Petra Carranza de Salinas seeks certification of the Bonded Immigrant Class under FRCP 23(b)(2). On behalf of herself and the Bonded Immigrant Class, Plaintiff Petra Carranza de Salinas seeks an injunction requiring the Bonding Defendants to provide the notice required under the terms of the uniform bond contracts, and corresponding declaratory relief.

- a. There are hundreds of members of the Bonded Immigrant Class, and the members are so numerous that joinder of all members of the class would be impracticable. The Bonded Immigrant Class therefore meets the numerosity requirement of FRCP 23(a)(1).
- b. There are multiple issues of fact and law common to the claims of the Bonded Immigrant Class, including whether the uniform contracts the Bonding Defendants enter into with the Indemnitors require the Bonding Defendants to provide notice of all appearances requested by the INS/DHS, of which the Bonding Defendants receive notice, to the Indemnitors and the Bonded Immigrants. The Bonded Immigrant Class therefore meets the commonality requirement of FRCP 23(a)(2).
- c. The claim of Petra Carranza de Salinas is typical of the claims of the members of the Bonded Immigrant Class. Like every member of the Bonded Immigrant Class, Ms. Salinas is a third-party beneficiary to the bond contracts entered into by the Indemnitors and the Bonding Defendants. Each of these bond contracts imposes a duty on the Bonding Defendants to provide notice of appearances requested by the INS/DHS to both the Bonded Immigrant and to the Indemnitor. Unfortunately, the Bonding Defendants make it their uniform practice to breach this duty by failing to provide the required notice. The Bonded Immigrant Class and the proposed class representative therefore meet the typicality requirement of FRCP 23(a)(3).
- d. Petra Carranza de Salinas, and her counsel, will adequately represent the class. The requirement of FRCP 23(a)(4) is met.
- e. By making it their practice to fail to fulfill their duty to provide notice to the Bonded Immigrants and the Indemnitors under the terms of the bond contracts, the Bonding Defendants have acted or failed to act on grounds generally applicable to the class. The requirement of FRCP 23(b)(2) is therefore met.

108. Plaintiffs Zamora-Garcia, Manuel Sandoval, Salinas, Cedeno, Norma Pena de Herrera, Isidro

Herrera, and Alvarado-Narvaez seek certification of the Supervision Class under FRCP 23(b)(2). Plaintiffs seek injunctive relief requiring the Federal Defendants to grant Orders of Supervision to the members of the class upon request of the class member, and in the absence of individual factors which would warrant the refusal to do so.

- a. The members of the Supervision Class are so numerous that joinder is impracticable.
- b. The claims of Plaintiffs Zamora-Garcia, Manuel Sandoval, Salinas, Ceden, Norma Pena de Herrera, Isidro Herrera, and Alvarado-Narvaez seek are typical of the members of the class. Plaintiffs Zamora-Garcia, Manuel Sandoval, Salinas, Ceden, Norma Pena de Herrera, Isidro Herrera, and Alvarado-Narvaez, like the members of the Supervision Class, fall within the definition of the class members described above.
- c. There are multiple issues of fact and law common to the claims of the Supervision Class, including whether federal law requires the Federal Defendants to grant the class members Orders of Supervision.
- d. Plaintiffs Zamora-Garcia, Manuel Sandoval, Salinas, Ceden, Norma Pena de Herrera, Isidro Herrera, and Alvarado-Narvaez, along with their counsel, will adequately represent the interests of the class members.
- e. The Federal Defendants have refused to act on grounds generally applicable to the class members.

109. Plaintiff Adriana Echavarria seeks certification of the Obligor Cash Bond Class under FRCP 23(b)(2). Plaintiff Adriana Echavarria seeks, for herself and the members of the Obligor Cash Bond Class, injunctive and declaratory relief requiring the Federal Defendants to reinstate the breached bonds posted by the members of the class, (if proceedings are ongoing), or reinstate and cancel the breached bonds (if proceedings have been completed).

- a. The members of the Obligor Cash Bond Class are so numerous that joinder is impracticable.
- b. The claim of Plaintiff Adrianna Echavarria is typical of the members of the class.
- c. There are multiple issues of fact and law common to the claims of Obligor Cash Bond Class, including whether federal law requires the Federal Defendants to take additional steps to provide notice of a demand on a cash bond to the Obligors on those bonds, in the situation of persons in the Obligor Cash Bond Class.

- d. Plaintiff Adrianna Echavarria, along with her counsel, will adequately represent the interests of the class members.
- e. The Federal Defendants have refused to act on grounds generally applicable to the class members.

110. Plaintiff Jorge Echavarria seeks certification of Immigrant Cash Bond Class A under FRCP 23(b)(2). Plaintiff Jorge Echavarria seeks injunctive and declaratory relief on behalf of himself and the Immigrant Cash Bond Class A, requiring the Federal Defendants to reinstate the breached bonds posted to secure the release of the class members (if proceedings are ongoing), or reinstate and cancel the breached bonds (if proceedings have been completed).

- a. The members of the Immigrant Cash Bond Class A are so numerous that joinder is impracticable.
- b. The claim of Plaintiff Jorge Echavarria is typical of the members of the class.
- c. There are multiple issues of fact and law common to the claims of Immigrant Cash Bond Class A, including whether federal law required the Federal Defendants to take additional steps to provide actual notice of a demand on a cash bond to the Obligor on the bonds that secured the release of persons in Immigrant Cash Bond Class A.
- d. Plaintiff Jorge Echavarria, along with his counsel, will adequately represent the interests of the class members.
- e. The Federal Defendants have refused to act on grounds generally applicable to the class members.

111. Plaintiff Juan Larin-Ulloa seeks to represent, as the Immigrant Cash Bond Class B under FRCP 23(b)(2). Plaintiff Juan Larin-Ulloa seeks injunctive and declaratory relief on behalf of himself and the Immigrant Cash Bond Class B, requiring the Federal Defendants to make efforts to provide notice of a demand on the bond consistent with *Jones v. Flowers*, 126 S. Ct. 1708 (2006), to the Obligor on the cash bonds securing the release of the members of the Immigrant Cash Bond Class B.

- a. The members of the Immigrant Cash Bond Class B are so numerous that joinder is impracticable.

- b. The claim of Plaintiff Juan Larin-Ulloa is typical of the members of the class.
- c. There are multiple issues of fact and law common to the claims of Immigrant Cash Bond Class B, including whether federal law requires the Federal Defendants to take additional steps to provide notice of a demand on a cash bond to the Obligor on those bonds securing the release of persons in Immigrant Cash Bond Class B.
- d. Plaintiff Juan Larin-Ulloa, along with his counsel, will adequately represent the interests of the class members.
- e. The Federal Defendants have refused to act on grounds generally applicable to the class members.

CAUSES OF ACTION

I. CLAIMS BROUGHT BY ALBERTA RUBIO AND IRMA SANDOVAL, INDIVIDUALLY AND ON BEHALF OF THE INDEMNITOR NOTICE CLASS, ARISING OUT OF THE BONDING DEFENDANTS' FAILURE TO PROVIDE NOTICE OF DHS-REQUESTED APPEARANCES.

Count One: Breach of Contract

112. All preceding paragraphs are incorporated in this Count as if expressly stated herein.

113. Aaron Bonding (as agent for Nobel and/or Ranger) entered into valid, written surety contracts with Irma Sandoval, Alberta Rubio, and the members of the Indemnitor Notice Class.

114. Plaintiffs Irma Sandoval, Alberta Rubio, and the members of the Indemnitor Notice Class have performed or, in the alternative, have substantially performed their obligations under the surety contracts. They have each paid the amounts due under the contracts to the Bonding Defendants, including payment of the exorbitant up-front fees.

115. The uniform surety contracts with the members of the Indemnitor Classes obligate Aaron Bonding (as agent for Nobel and/or Ranger) to provide notice of all appearances requested by the DHS, of which they receive notice, to the Bonded Immigrant on such surety contract and to the Indemnitor on that surety contract.

116. The surety contract entered into by Irma Sandoval obligated Aaron Bonding (as agent for

Nobel) to provide notice of demands on the Surety Bond for Manuel Sandoval, of which Aaron Bonding received notice, to Irma Sandoval and Manuel Sandoval.

117. The surety contract entered into by Alberta Rubio obligated Aaron Bonding (as agent for Ranger) to provide notice of demands on the Surety Bond for Miguel Rubio, of which Aaron Bonding received notice, to Alberta Rubio and Miguel Rubio.

118. However, the Bonding Defendants have systematically failed to provide notice of DHS demands on the Surety Bonds to either the members of the Indemnitor Notice Class (including Irma Sandoval and Alberta Rubio) or the Bonded Immigrant on those surety contracts (including Manuel Sandoval and Miguel Rubio).

119. In fact, the Bonding Defendants make it their practice not to provide this notice, despite entering uniform contracts requiring them to provide notice to both the Bonded Immigrant and the Indemnitor and without regard to whether the Indemnitors and Bonded Immigrants maintain regular communication with the Bonding Defendants.

120. Every time the Bonding Defendants fail to provide notice of a demand of which they have notice on these Surety Bonds, the Bonding Defendants breach their contracts with the Indemnitors.

121. As a result of the Bonding Defendants' breach, Irma Sandoval, Alberta Rubio, and the other members of the Indemnitor Class and Indemnitor Subclass have all been damaged.

122. Plaintiffs Irma Sandoval and Alberta Rubio, individually, and on behalf of the Indemnitor Class and the Indemnitor Subclass, seek damages equal to the value of all non-refundable, up-front fees paid to the Bonding Defendants when entering the Surety Contracts.

II. CLAIMS BROUGHT BY ALBERTA RUBIO INDIVIDUALLY AND ON BEHALF OF THE INDEMNITOR COLLATERAL CLASS, ARISING OUT OF THE BONDING DEFENDANTS' FAILURE TO RETURN COLLATERAL UPON A CANCELLATION OF THE BOND.

Count Two: Breach of Contract

123. All preceding paragraphs are incorporated in this Count as if expressly stated herein.

124. Aaron Bonding (as agent for Nobel and/or Ranger) entered into valid, written surety contracts with Alberta Rubio and the members of the Indemnitor Collateral Class.

125. Plaintiff Alberta Rubio and the members of the Indemnitor Collateral Class have performed or, in the alternative, have substantially performed their obligations under the surety contracts. In particular, they have each paid the amounts due under the contracts to the Bonding Defendants, including payment of the exorbitant up-front fees and the collateral due under the contracts.

126. The uniform surety contracts with the members of the Indemnitor Classes obligate the Bonding Defendants to return collateral paid under the terms of the contracts to the Indemnitors upon the cancellation of the bond at issue.

127. The Bonding Defendants have failed to return the posted collateral to Alberta Rubio and the members of the Indemnitor Collateral Class. This failure constitutes a material breach of the terms of the bonding contracts. This breach has caused Alberta Rubio and the members of the Indemnitor Collateral Class injury in the amount of the collateral deposited with the Bonding Defendants, less any fees or costs the Bonding Defendants may validly deduct from the collateral, pursuant to the terms of the contracts.

128. Plaintiff Alberta Rubio, individually, and on behalf of the Indemnitor Collateral Class, seek damages equal to the value of all collateral deposited with the Bonding Defendants, less any fees or expenses that may be validly charged against the collateral under the terms of the bonding contracts.

III. CLAIMS BROUGHT BY PETRA CARRANZA DE SALINAS INDIVIDUALLY AND ON BEHALF OF THE BONDED IMMIGRANT CLASS, ARISING OUT OF THE BONDING DEFENDANTS' FAILURE TO PROVIDE NOTICE OF APPEARANCES REQUESTED BY THE DHS.

Count Three: Equitable Relief Preventing Breach of Contract

129. All preceding paragraphs are incorporated in this Count as if expressly stated herein.

130. In accordance with Federal Rule of Civil Procedure 65 and pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§2201-02, Plaintiff Petra Carranza de Salinas seeks injunctive and declaratory relief on her own behalf and on behalf of the members of the Bonded Immigrant Class.

131. Plaintiff Petra Carranza de Salinas, individually and on behalf of the Bonded Immigrant Class, seeks an injunction requiring the Bonding Defendants, directly or through their agents, to make good faith efforts to provide actual, timely, and reasonable notice to the Bonded Immigrants and the Indemnitors of any and all demands for performance made on those bonds by the Federal Defendants.

132. Because the breach of the bond contract securing her release from INS/DHS detention threatens her immigration rights and her ability to remain in the United States, Petra Carranza de Salinas has no adequate remedy at law.

133. Plaintiff Petra Carranza de Salinas individually, and on behalf of the Bonded Immigrant Class, also seek corresponding declaratory relief.

ATTORNEYS' FEES

134. Plaintiffs have retained the undersigned counsel to seek recovery of the damages listed above. Plaintiffs seek recovery of reasonable and necessary attorneys' fees as well as costs of suit.

135. Attorneys fees are also recoverable pursuant to Tex. Civ. Prac. & Rem. Code Chapter 38 for breach of contract.

IV. COUNTS AND CLAIMS BROUGHT BY ARACELY ZAMORA-GARCIA, MANUEL SANDOVAL, PETRA CARRANZA DE SALINAS, MARIA FRANCISCA ARCE CEDENO, NORMA PENA DE HERRERA, ISIDRO HERRERA, LUIS ALVARADO-NARVAEZ, AND ALMA RITA MALAGON DE FUENTES, INDIVIDUALLY AND ON BEHALF OF THE SUPERVISION CLASS.

Count Four: Supervision Class Claims

136. Plaintiffs listed immediately above request an injunction on their own behalves and on behalf of the class they seek to represent requiring that, upon request of the class member, and in the absence of individual factors which would warrant the refusal to do so, the Federal Defendants place said class members under Orders of Supervision.

V. COUNTS AND CLAIMS BROUGHT BY ADRIANA ECHAVARRIA, JORGE ECHAVARRIA, AND JUAN LARIN-ULLOA INDIVIDUALLY AND ON BEHALF OF THE CASH BOND CLASSES.

Count Five: Obligor Cash Bond Class Claim

Count Six: Immigrant Cash Bond Class Claim A

Count Seven: Immigrant Cash Bond Class Claim B

137. The Immigrants at issue in each of the Cash Bond Classes have appeared at every hearing or other required appearance of which they have received notice. Jorge Echivarria and Juan Larin-Ulloa have appeared at every hearing or other required appearance of which they have received notice over the course of their removal proceedings.

138. Where attempted notice of a demand on a cash bond sent to an Obligor is returned undelivered, and no further attempt is made to send notice to the Obligor, but where the Bonded Immigrant presents him or herself at all scheduled hearings and appearances of which s/he had actual notice, the cash obligor has “substantially” complied with the conditions of the bond at least to the same degree as a surety obligor who presents a Bonded Immigrant long after a scheduled surrender date. Where the Federal Defendants breach the cash bond, and cancel the bond posted by the surety under such circumstances, it deprives the cash obligor of

Equal Protection and Due Process.

139. The favoritism shown by the Federal Defendants to surety obligors over cash obligors deprives cash obligors of Equal Protection and Due Process.

140. The complicity between the Federal Defendants and the Bonding Defendants violates public policy and often deprives the real parties in interest (the Immigrants released on cash bonds) of Due Process in their removal proceedings, and of the benefits of the bonds for which they contracted, and results in the unjust enrichment of all Defendants.

141. Under *Jones v. Flowers*, 126 S. Ct. 1708 (2006), the Federal Defendants must make efforts to provide actual notice of a demand on a cash bond to the obligors on the bonds, after a demand on the bond has been returned to the Federal Defendants undelivered, but where the Immigrants on the bond have appeared at every hearing or other required appearance of which they have notice.

142. Therefore, Plaintiff Adrianna Echavarria, individually and on behalf of the Obligor Cash Bond Class, seeks an injunction injunctive and declaratory relief requiring the Federal Defendants to reinstate the breached bonds posted by the members of the class, (if proceedings are ongoing), or reinstate and cancel the breached bonds (if proceedings have been completed).

143. Plaintiff Jorge Echavarria, individually and on behalf of the Immigrant Cash Bond Class A, seeks injunctive and declaratory relief requiring the Federal Defendants to reinstate the breached bonds posted on behalf of the members of the class, (if removal proceedings are ongoing), or reinstate and cancel the breached bonds (if removal proceedings have been completed).

144. Plaintiff Juan Larin-Ulloa, individually and on behalf of the Immigrant Cash Bond Class B, seeks injunctive and declaratory relief requiring the Federal Defendants to make efforts to provide notice of a demand on the bond consistent with *Jones v. Flowers*, 126 S. Ct. 1708 (2006), to the Obligor on the cash

bonds securing the release of the members of the Immigrant Cash Bond Class B.

VI. INDIVIDUAL CLAIMS BROUGHT BY JUANA ZAMORA AND ARACELY ZAMORA-GARCIA, AND MIGUEL RUBIO.

Count Eight: Intentional Infliction of Emotional Distress

145. All preceding paragraphs are incorporated in this Count as if expressly stated herein.

146. On April 15, 2002, several men, including Defendant Sol, and an officer from the Mission Police Department, went to the home of Juana Zamora in Mission, Texas.

147. On information and belief, Plaintiffs allege that Defendant Sol was acting as agent for Defendant Aaron Bonding. Indeed, he left a business card with an "office" phone number, (713) 225-1386, which was, at the time the instant action was filed, answered by Defendant Aaron Bonding. In addition, this telephone number and was also listed in various websites as belonging to Defendant Aaron Bonding.

148. Mr. Sol falsely asserted that he had a warrant for Aracely Zamora's removal, issued in December, 2001, and that he was authorized to arrest her. He further claimed that there was an order that she surrender to INS in San Antonio at 8:00 a.m. the following day.

149. As a result, Plaintiff Juana Zamora called Counsel, who contacted Mr. Sol and advised him that any warrant for Aracely Zamora's removal issued in December, 2001, could not be valid, because her appeal was pending at that time and, thus, she was not subject to deportation. Counsel also advised him that she would surrender Aracely Zamora to the Harlingen INS office in the morning.

150. Nevertheless, Defendant Sol insisted that Aracely Zamora be surrendered to him, and threatened both Juana Zamora and Counsel with criminal charges of harboring a fugitive, for refusing to do so.

151. However, Counsel made arrangements with the Federal Defendants and Aracely Zamora was surrendered to the Federal Defendants the next day at the Harlingen INS Office, where she remained when the instant action was filed, and was thereafter allowed to leave.

152. Despite Aracely Zamora's voluntary surrender, Defendant Sol returned to the homes of Juana and Aracely Zamora, and to the homes of other relatives several times over the next two days, even after being advised that the petition for habeas corpus had been filed, and that Zamora had been allowed to leave the Harlingen INS office.

153. Defendant Sol harassed and scared Juana Zamora so severely that she refused any contact with her daughter Aracely Zamora. In addition, Aracely Zamora was forced to spend several days at various locations, out of fear for Defendant Sol.

154. These incidents caused severe emotional distress for both Aracely Zamora and Juana Zamora. This emotional distress was so severe, Aracely Zamora has only recently been able to resume her normal life, for fear that Defendant Sol would locate her, and take reprisals, and for fear that an encounter with him or with INS would lead to her removal, thereby mooting her motion to reconsider and finalizing her removal.

155. Therefore, Plaintiffs Aracely and Juana Zamora seek recovery for intentional infliction of emotional distress, in that Defendant Aaron Bonding and Defendant Sol engaged in intentional, outrageous conduct that proximately cause Plaintiffs Aracely and Juana Zamora to suffer severe emotional distress. Plaintiffs seek damages in the sum of \$100,000 for Plaintiff Aracely Zamora and \$50,000 for Plaintiff Juana Zamora.

VII. INDIVIDUAL CLAIMS BROUGHT BY MIGUEL RUBIO.

Count Nine: False Imprisonment

156. All preceding paragraphs are incorporated in this Count as if expressly stated herein.

157. Miguel Rubio-Flores ("Miguel Rubio") is a native and citizen of Mexico and lawful permanent resident of the U.S., who was placed in deportation proceedings in 1996. His mother, Alberta Rubio, contacted Aaron Bonding, contracted with it for the posting of the Surety Bond, and served as the Indemnitor on the bond.

The bond company posted a \$3,000 Surety Bond on behalf of Mr. Rubio. The bond company contractually agreed to provide both Mr. Rubio and Alberta Rubio with notice of all appearances of Mr. Rubio requested by the INS/DHS.

158. Approximately a month before his DHS-scheduled appearance, the INS, without informing Miguel Rubio, sent notice of a demand on the bond to the bonding company, requiring that it deliver him to INS. The bond company did not inform either Miguel Rubio or his Indemnitor, Alberta Rubio.

159. An agent of Aaron Bonding apprehended Mr. Rubio, in the middle of the night, in his home, on April 11, 2005, and surrendered him to the INS/DHS on April 12, 2005. Aaron Bonding had no right, contractually or otherwise, to apprehend Mr. Rubio on April 11, 2005, or April 12, 2005. Aaron Bonding's surrender of Mr. Rubio prior to the conclusion of Mr. Rubio's removal proceedings was a violation of the bonding contract between Ms. Rubio and Aaron Bonding and a violation of Mr. Rubio's third-party contract rights. Because of the Bonding Defendants' surrender of Mr. Rubio, he was forced to remain in detention for nearly five months, until September 5, 2005, when he finally was able to obtain a new surety bond from a different bond company.

160. Therefore, Plaintiff Miguel Rubio seeks recovery for false imprisonment in that the Bonding Defendants apprehended Mr. Rubio with no contractual or legal authority for doing so.

161. Plaintiff Miguel Rubio also seeks recovery for the damages caused him by the Bonding Defendants' surrender of him to the INS/DHS in violation of his contractual rights as a third-party beneficiary of the contract between Alberta Rubio and the Bonding Defendants. Miguel Rubio also seeks to recover punitive damages.

WHEREFORE Plaintiffs pray that the Court certify the named classes; and

WHEREFORE Plaintiffs hereby demand a trial by jury for all issues raised by the foregoing Sixth

Amended Petition for Writ of Habeas Corpus and Class Action Complaint that are so triable; and

WHEREFORE Plaintiffs respectfully pray that upon trial of this cause, judgment be entered in their favor for the following relief:

- a. judgment against the Defendants for all the actual damages sustained by Plaintiffs complained of herein;
- b. punitive damages;
- c. just and reasonable attorney fees;
- d. pre- and post-judgment interest;
- e. the injunctive and declaratory relief described herein;
- f. cost of suit, and
- g. such other relief at law or in equity to which Plaintiffs may be entitled.

Respectfully Submitted,

/s/ J. Benjamin King

J. Benjamin King

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